



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/169217

PRELIMINARY RECITALS

Pursuant to a petition filed October 05, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on November 19, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly issued a child care overpayment in the amount of \$199.82 for March 8, 2015 through April 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On September 17, 2015 the agency sent the petitioner a notice stating that she was overpaid \$199.82 in child care benefits the period of March 8, 2015 through April 30, 2015.

3. The petitioner and the father of her child were living together in the same home in March and April of 2015.
4. In February 2015 the petitioner reported that the father had moved out of the home. This was not true. The father did not move out of the home until the end of April 2015.
5. The household's monthly gross income in March 2015 was \$3,148.96. In April 2015 the household's monthly gross income was \$3,207.78. Given the household's income, the family was not eligible for child care assistance in March and April 2015. The household received \$199.82 in child care benefits for those months.
6. On October 7, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See Wis. Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

One criterion to qualify for Childcare Assistance is that parents/caretakers must have a low income. Specifically, new applicants cannot have income exceeding 185% of the Federal Poverty Level (FPL) and ongoing recipients cannot have income exceeding 200% FPL. See the *Day Care Manual (Manual)*, § 1.5.1.1., and 1.5.1.2. The available gross income of all household members is considered unless specifically excluded by the Childcare Assistance program rules or policy:

Available income is considered in the gross income test. **Count the earned income and adjusted gross self-employment income of all AG members, except minors and dependent 18 year olds.**

...

Earned and Unearned Income – Count all earned and unearned income when determining eligibility.

Id., 1.5.2 (emphasis added). The *Manual* goes on to list types of income that are included and excluded and can be found at <http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>.

The *Manual* defines further the parameters of an Assistance Group (AG). The Child Care AG consists of persons living in the same household including:

1. The custodial parent(s), guardian, foster parent, treatment foster parent, legal custodian, kinship parent, or person acting in place of the parent.
2. The spouse or nonmarital co-parent.
3. All minor children to whom the custodial parent his/her spouse has legal responsibility, legal custody, or provides care or maintenance.
4. Any children of the nonmarital co-parent.

Id., 1.4.1. The agency shall take all steps necessary to recover from the client, funds paid to the child care provider when the client was not eligible. *Id.*, 3.5.1. All overpayments made to a client, whether due to client error, administrative error, or fraud, **must** be formally established to be repaid by the client. *Id.*, 3.5.2.

The issue in this case is whether the father was in the home during the overpayment period. The petitioner admits that the father was in the home. The petitioner argues that she should not have to pay back the benefits because she did not actually receive the benefits, rather he received the benefits. She testified that the father made her call the agency and report that he was out of the home in February 2015. He then opened his own FS and child care cases with the child listed on his case. His income was lower than the petitioner's income, and this allowed them to qualify for more public assistance benefits.

The problem with the petitioner's argument is that she never called the agency to report that he had forced her to do this. Also, had the agency not caught the overpayment, contrary to the the petitioner's argument, she would have benefited from the scheme. For some of the time that her child was in childcare, she would not have had to pay for the childcare. She argues this would have been his responsibility not hers, however, they were living in the same home.

There is no dispute that the family's income was over 185% FPL and that they were living together during the overpayment period. Therefore, both the petitioner and her boyfriend are responsible for this child care overpayment.

CONCLUSIONS OF LAW

The agency correctly issued a child care overpayment in the amount of \$199.82 for March 8, 2015 through April 30, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 23, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud